

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL NORMAN,

Petitioner,

v.

JAMES ROBERTSON,

Respondent.

No. 1:20-cv-00455-DAD-JLT (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, GRANTING
RESPONDENT'S MOTION TO DISMISS,
DISMISSING THE PETITION FOR WRIT OF
HABEAS CORPUS, AND DECLINING TO
ISSUE A CERTIFICATE OF
APPEALABILITY

(Doc. Nos. 1, 10, 14)

Petitioner Daniel Norman is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 5, 2018, the assigned magistrate judge issued findings and recommendations, recommending that: (1) respondent James Robertson's motion to dismiss the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases (Doc. No. 10) be granted; (2) the pending habeas corpus petition be dismissed; and (3) a certificate of appealability not issue. (Doc. No. 14.) Specifically, the magistrate judge found that the claim petitioner is asserting in his petition—that a prison disciplinary action violated his due process rights (Doc. No. 1 at 4)—was not cognizable on federal habeas review under the circumstances of this case

1 where the granting of the requested relief would not lead to petitioner's speedier release from
2 custody. (*Id.* at 3.) The findings and recommendations were served on petitioner and contained
3 notice that any objections were to be filed within twenty-one (21) days of the date of service. (*Id.*
4 at 4.) To date, petitioner has filed no objections to the findings and recommendations, and the
5 time for doing so has now passed.

6 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the undersigned has
7 conducted a *de novo* review of the case. Having carefully reviewed the entire file, the
8 undersigned concludes that the findings and recommendation are supported by the record and
9 proper analysis.

10 Having found that petitioner is not entitled to habeas relief, the court now turns to whether
11 a certificate of appealability should issue. A prisoner seeking a writ of habeas corpus has no
12 absolute entitlement to appeal a district court's denial of his petition, as an appeal is only allowed
13 under certain circumstances. 28 U.S.C. § 2253; *Miller-El v. Cockrell*, 537 U.S. 322, 335-336
14 (2003). In addition, Rule 11 of the Rules Governing Section 2254 Cases requires that a district
15 court issue or deny a certificate of appealability when entering a final order adverse to a
16 petitioner. *See also* Ninth Circuit Rule 22-1(a); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th
17 Cir. 1997). If, as here, a court denies a petition for a writ of habeas corpus, the court may only
18 issue a certificate of appealability when "the applicant has made a substantial showing of the
19 denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make a substantial showing, the
20 petitioner must establish that "reasonable jurists could debate whether (or, for that matter, agree
21 that) the petition should have been resolved in a different manner or that the issues presented
22 were 'adequate to deserve encouragement to proceed further.'"
23 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)). Here, petitioner has not made
24 such a showing. Therefore, the court declines to issue a certificate of appealability.

25 For the reasons set forth above:

- 26 1. The findings and recommendations issued on August 7, 2020 (Doc. No. 14) are
27 adopted in full;
- 28 2. Respondent's motion to dismiss (Doc. No. 10) is granted;

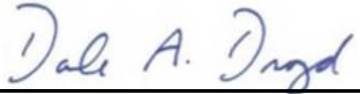
3. The petition for writ of habeas corpus (Doc. No. 1) is dismissed;

4. The court declines to issue a certificate of appealability; and

5. The Clerk of Court is directed to close the case.

IT IS SO ORDERED.

Dated: September 24, 2020


UNITED STATES DISTRICT JUDGE